



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

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October 7, 1996

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The Honorable William F. Caton
Secretary
Federal Communications Commission
1919 M Street N.W. Room 222
Washington, D.C. 20554

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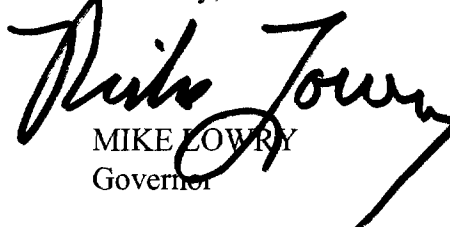
Dear Mr. Secretary:

Re: ET-Docket 93-62, Rule and Order FCC 96-326

Status of motion to file late by one day a petition for reconsideration filed by the Ad-Hoc Association of Parties Concerned About the Federal Communications Commission's Radiofrequency Health and Safety Rules et al.

Enclosed please find the original and 14 copies of a letter sent to Chairman Reed Hundt concerning the status of the petition for consideration given above. Please place in the record and distribute as needed.

Sincerely,


MIKE LOWRY
Governor

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The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street N. W.
Washington, D.C. 20554

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Dear Mr. Chairman:

Re: In the matter of ET docket 93-62, Rule and Order FCC 96-326

Request to grant motion to accept a petition for reconsideration late-filed due to emergency road conditions caused by Hurricane Fran on September 6, 1996; Filed September 9, 1996 by Ad-Hoc Association of Parties Concerned About the Federal Communications Commission's Radiofrequency Health and Safety Rules et al.

I understand some members of the public, including Olympia, Washington Local 7810 of the Communication Workers of America and other citizens of the State of Washington are very concerned regarding the recently released Commission rules for the safety of emissions from Commission licensed radio frequency facilities. This being so, I understand they have submitted a petition for reconsideration of the Commission Rule and Order FCC 96-326, representing themselves as the Ad-Hoc Association of Parties Concerned About the Federal Communications Commission's Radiofrequency Health and Safety Rules et al. Also, I understand it was submitted one business day late due to flooding from Hurricane Fran, and that a motion was filed on the day submitted to accept this petition.

I strongly believe it is very important for citizens to have every opportunity to have their concerns fully considered in this matter by the Commission and believe such consideration will significantly benefit the public interest. Hence, I believe considering whether the above motion to consider whether this petition should be granted deserves the Commission's thoughtful attention.



The Honorable Reed Hundt
October 7, 1996
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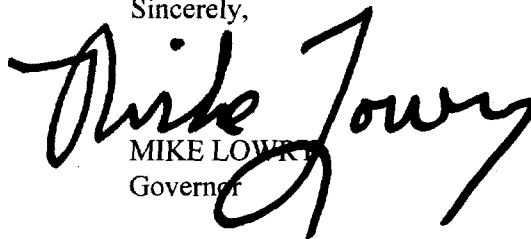
I understand that due to the unusual circumstances and emergency situation associated with the road flooding due to Hurricane Fran in the Washington D.C. area on September 6, 1996, that the courier service delivering the petition that day had anticipated there was sufficient time to deliver this petition during the Commission's business hours, and could have done so but for the exceptional and unusual circumstances brought on by the flooding in Washington D.C. caused by Hurricane Fran. Also, I understand the documents were delivered the first subsequent business day, with the courier holding the documents so that the petitioners did not gain any special time advantage, and that the courier has signed a statement under penalty of perjury that all of the above so occurred

This being so, I understand that, "In an emergency situation the Commission will consider a late-filed motion for a brief extension of time related to the duration of emergency" and will consider "papers filed after the filing date." [47 CFR Part 1, Section 1.46(b).] Furthermore, federal courts have found that given "unusual circumstances", exceptions to rules limiting time periods for Commission reconsideration's are allowed [Central Television, Inc. v. FCC, 834 F.2d 186 (D.C. Cir. 1987)]. In addition, "Statutory provision requiring filing of petition for reconsideration with 30 days of public notice...is not absolute bar to Commission's reconsideration of issues raised after that time and requires only that Commission have fair opportunity to pass on issues as condition precedent to judicial review." [Meredith Corp. v. FCC, 809 F.2d 863].

Not only was the motion and petition for reconsideration filed only one business day after the filing date and due to an emergency situation and unusual circumstances, but also a public notice of the petitions for reconsideration received in this docket was not issued until September 18, 1996, nine days after the petition in question was filed, and notice not published in the Federal Register until September 23, 1996. Hence, there shall be fair opportunity for the public to comment on this petition and for the Commission to pass on the matters in the petition. Therefore, it seems that the requirements to allow for granting the above motion are met.

Thus, I urge the Commission to grant this motion to accept this petition. I also request the Commission make any other allowances which it also may do in order that this petition for reconsideration will have standing to be given full consideration based on its merits, for this will best serve the public interest.

Sincerely,


MIKE LOWRY
Governor